

ORIGINAL

VAN wie

10
8/30/00
vh

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HUANG AI JIN and
ZHANG KE LIANG,

Petitioners,

- against -

JANET RENO,

Respondent.

No. 1:CV-00-1029

No. 1:CV-00-1030

(Judge Kane)

PRSLC Van Wie

FILED
HARRISBURG, PA

AUG 29 2000

REPLY TO RESPONSE TO ORDER TO SHOW CAUSE
WAXY ANDREA, CLERK
Per Deputy Clerk

1. The undersigned, Lawrence A. Dubin, Esq., and Robert A. Horne, are the attorneys for petitioners Zhang Ke Liang and Huang Ai Jin respectively and as such are fully familiar with the facts and circumstances herein.
2. The government, in their response to the Order to Show Cause, conceded that this Court has jurisdiction for the Habeas Corpus relief where the alien "is in custody in violation of the Constitution or laws or treaties of the United States." *Sandoval v. Reno*, 166 F.3d 225, 238 (quoting 28 U.S.C. §2241(c)(3)).
3. Nevertheless, the government asserts that this Court does not have jurisdiction in the present case because "petitioners have not claimed that they are being unlawfully or unconstitutionally detained" and are

merely seeking review of the decision of the Board of immigration appeals. (See Gov. Response to Order to Show Cause at p.4).

4. Petitioners, however, have indeed claimed that they are unlawfully detained in their respective petitions. See petitions for Writ of Habeas Corpus at p. 5).
5. Petitioners' have neither alleged that they seek review of the BIA's decision nor have they alleged what errors the BIA made (or may have made) in rendering its decision.
6. Rather, coupled with petitioners' allegations of unlawful detention, their petitions, though not stated specifically, have all the hallmarks of a constitutional Equal Protection claim under the Fifth Amendment to the United States Constitution.
7. Petitioners' have certainly set forth sufficient facts, which were previously established through the Immigration Court hearings and which would entitle them to Habeas Corpus relief.
8. Accordingly, this Court has jurisdiction over the present matter and the government's response must be denied in its entirety.

9. Alternatively, petitioners request leave of Court to amend their pleadings pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 15 so as to clarify and more specifically identify their constitutional claim(s).
10. The FRCP are applicable to petitions filed pursuant to 28 USC 2241, et seq. See 28 USC 2242.
11. Pursuant to FRCP rule 15(a) leave of Court to amend "shall be freely given when justice so requires".
12. Here, there is absolutely no prejudice to the government should petitioners be granted leave to amend their petitions. Conversely, justice would require that petitioners be granted leave to amend, particularly where this Court does have jurisdiction to entertain Habeas Corpus petitions.
13. Also, in the alternative, petitioners request permission of this court to withdraw their petitions without prejudice to re-file.

WHEREFORE, based on the foregoing, it is respectfully requested that this Court issue an Order retaining jurisdiction and denying the government's request for dismissal or transfer to the Court of Appeals, or, in the alternative, granting leave of Court to amend the petitions herein, or in the alternative, granting permission to withdraw the petitions without prejudice to re-file; and granting such other and further relief as this Court deems fair and just and lawful.

Dated: New York, New York

August 28, 2000

Respectfully submitted,


A handwritten signature in dark ink, appearing to read "Lawrence Dubin", is written over a horizontal line.

LAWRENCE A. DUBIN
Attorney for Zhang Ke Liang
401 Broadway, Suite 306
New York, New York 10013
(212)431-9380


A handwritten signature in dark ink, appearing to read "Robert A. Horne", is written over a horizontal line.

ROBERT A. HORNE
Attorney for Huang Ai Jin
401 Broadway, Suite 306
New York, New York 10013
(212)431-9380

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**HUANG AI JIN and
ZHANG KE LIANG,**

Petitioners,

- against -

No. 1:CV-00-1029

No. 1:CV-00-1030

(Judge Kane)

**AFFIDAVIT OF
SERVICE**

JANET RENO,

Respondent.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, the undersigned, being duly sworn, say:

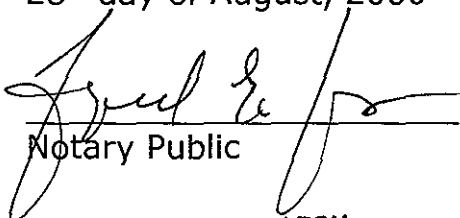
I am not a party to the action, am over 18 years of age and reside at Kew Gardens, New York.

On August 28, 2000, I served the within Reply to Response to Order to Show Cause by dispatching a copy by overnight delivery (Fed/Ex) to each of the following persons at the last known address set forth after each name:

AUSA Mary Catherine Frye
U.S. Attorney's Office
228 Walnut Street
Harrisburg, PA 17108


Helen Xu

Sworn to before me on this
28th day of August, 2000


Notary Public

INGRIDE. LEON
Notary Public, State of New York
No. 01-LE6008577
Qualified in New York County
Commission Expires June 15, 2002